



0000159941

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

SUSAN BITTER-SMITH, CHAIRMAN

BOB STUMP

BOB BURNS

TOM FORESE

DOUG LITTLE

2015 FEB -4 P 4:42
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB 04 2015

DOCKETED BY

IN THE MATTER OF THE
APPLICATION OF ICR WATER
USERS ASSOCIATION, INC. TO
EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02824A-01-0900

APPLICATION TO AMEND
DECISION NO. 64667 OR,
TERNATIVELY, TEMPORARY
SUSPENSION OF SERVICE
EXPANSION

ORIGINAL

ICR Water Users' Association ("ICRWUA"), pursuant to A.R.S. § 40-252, respectfully requests the Commission to amend Decision No. 64667, dated March 25, 2002 (which conditionally expanded ICRWUA's certificated area to encompass Whispering Canyon) by either (1) eliminating the requirement that "the developer of Whispering Canyon should include in its advance, a well(s) producing sufficient water to serve the extension area" at full build-out (*see*, Findings of Fact 29 and 30), or alternatively, (2) temporarily suspending further expansion of water service to yet unplatted phases of Whispering Canyon, all as more fully explained below. The pendency of a lawsuit filed in Yavapai County Superior Court (Case No. P1300-CV201400954) by Old Capitol Investments L.L.C. and Whispering Canyon Development L.L.C. against ICRWUA necessitates these issues be resolved as soon as possible.

BACKGROUND

ICRWUA is a nonprofit, customer-owned association that elects its Board of Directors from among its customer-members. IRCWUA is certificated to serve approximately 5,050

1 acres in Yavapai County, Arizona. At build-out ICRWUA will serve approximately 2,300
2 residential lots and a golf course. *See*, Decision Nos. 59263, dated August 30, 1995 (356
3 residential lots), Decision No. 64360, dated January 15, 2002 (1,500 residential lots and a
4 golf course) and Decision No. 64667, dated March 25, 2002 (402 residential lots) ICRWUA
5 currently serves approximately 510 residential lots, plus the golf course.

6 ICRWUA owns three wells (the TRR Well Field) dedicated to serve the 1,500 lots and
7 golf course within the Talking Rock Ranch Development.¹ The Talking Rock Development
8 will constitute more than two-thirds of ICRWUA's total demand at build-out. Neither the
9 TRR Well Field nor the Talking Rock Ranch Development is impacted by this application.

10 ICRWUA also equipped, operates and maintains two wells (the ICR Well Field)
11 registered to Aqua Meadows, LLC under a 1995 Water Purchase Agreement ("WPA"). The
12 WPA can extend through July 31, 2095. Each of the wells is capable of meeting the full
13 water demand of the approximately 800 lots planned for the non-Talking Rock Ranch portion
14 of ICRWUA's certificated area (which includes Inscription Canyon Ranch, the Preserve at
15 the Ranch and Whispering Canyon).

16 As a condition of extending ICRWUA's certificated area to encompass Whispering
17 Canyon, Decision No. 64667, among other things,² required ICRWUA to secure, as an
18 advance, an additional well (or wells) and associated facilities from the Whispering Canyon's

19
20 ¹ The documents conveying these wells limit their use to serving the Talking Rock Ranch
Development.

21 ² The extension of ICRWUA's certificate was approved conditioned upon all the following
22 being filed with the Director of the Commission's Utilities Division no later than March 25, 2003: 1) A copy of the developer's letter of water adequacy for Phase I, issued by the ADWR; 2) A copy of
23 the developer's Certificate of Approval to Construct with the appropriate main extension agreement, if not previously filed; 3) Copies of all documents of conveyance from the developer of Whispering
24 Canyon; and 4) An amended Main Extension Agreement including in the Developer's advance, a
25 well(s) producing sufficient water to serve the extension area at full build-out, together with a copy of the relevant documents transferring ownership of the well and related water production facilities to
ICRWUA.

1 developer. The well (or wells) and associated facilities were to be capable of meeting the
2 water demand of Whispering Canyon at build-out (approximately 402 residential lots within
3 approximately 893 acres).³

4 In 2003, the developer, by special warranty deed, conveyed ICRWUA title to an
5 ADWR registered well (WC#2) located in the Long Meadow Ranch Unit 2 located about two
6 (2) miles from ICRWUA's existing distribution system that serves Whispering Canyon.
7 However, the developer has never equipped WC#2 or interconnected it to the ICRWUA
8 water distribution system. As a result, Whispering Canyon Phases 1-4, consisting of 175
9 lots,⁴ receives water solely from the ICR Well Field under the WPA.

10 Following receipt of the deed for WC#2, ICRWUA filed a Notice of Compliance on
11 March 13, 2003, submitting the various documents it believed satisfied the requirements of
12 Decision No. 64667. ICRWUA has recently discovered many impediments exist to the use of
13 WC#2 by ICRWUA. Those impediments include, without limitation, the following:

- 14 ● Covenants, Conditions and Restrictions on the property that seek to restrict the
15 property's use to "residential purposes only" and prohibit transporting water
16 "from any parcel for commercial, agricultural, ranching use, or to support any
17 other real estate development;"
- 18 ● The lack of ingress and egress to the well;
- 19 ● The lack of any "related water production facilities" or well equipment,
20 including electrical power;

21
22
23

³ Decision No. 64360 contained a similar requirement for expanding ICRWUA's certificate to
24 cover the much larger Talking Rock Ranch development and golf course.

25 ⁴ At this time, less than 50 of the total 175 lots in Phases 1-4 are receiving water service from
ICRWUA. At least 75 lots in Phases 1-4 still remain to be sold by the developer.

- 1 • The lack of easements for water lines to interconnect with ICRWUA's water
- 2 system; and
- 3 • The lack of interconnection with ICRWUA's water system.

4 Despite repeated requests, Developer has refused to address the foregoing issues. As a
5 result, ICRWUA believes the developer has failed to satisfy the new well requirement as
6 intended by the Commission in Decision No. 64667.

7 By this application, ICRWUA requests the Commission either (1) amend Decision No.
8 64667 to eliminate the well and associated facilities requirement or, alternatively, (2)
9 temporarily suspend expansion of service into the unplatted phases of Whispering Canyon.
10 The temporary suspension should be lifted upon the Utility Staff docketing a Memorandum
11 indicating it has received documentation evidencing, to Staff's satisfaction, all of the
12 following:

- 13 a) The developer has conveyed to ICRWUA a well or wells producing sufficient
- 14 water to serve Whispering Canyon at full build-out;
- 15 b) The Main Extension Agreement has been amended to expressly require, by a time
- 16 certain, the developer equip the well or wells, install associated production
- 17 facilities and interconnect the well(s) and associated facilities to ICRWUA's
- 18 distribution system and meet the water demand of Whispering Canyon at build-out;
- 19 and
- 20 c) The developer is otherwise in compliance with the Main Extension Agreement
- 21 entered into with ICRWUA.

22 **THE WELL REQUIREMENT CAN BE ELIMINATED**

23 The cost of addressing the foregoing issues with WC#2, or alternatively, securing
24 additional well(s) in order to satisfy the well and related facilities requirement of Decision
25

1 No. 64667 will be significant. Such costs will ultimately be paid by ICRWUA's customers,
2 either in the price of lots, the cost of water, or both.

3 Staff had originally recommended approval of the extension encompassing
4 Whispering Canyon without requiring the developer to provide an additional source of water.
5 However, the Administrative Law Judge and the Commission expressed concern with
6 ICRWUA's reliance on a Water Purchase Agreement to supply water for the extension area.⁵
7 While ICRWUA understands and appreciates the Commission's concern, the public interest
8 must weigh the cost of securing an additional source of water versus the adequacy of the
9 existing water supply available to ICRWUA.

10 Following issuance of Decision No. 64667 a back-up well (ICR #2) for the ICR Well
11 Field has been drilled, equipped, and interconnected to the ICRWUA system as a full time
12 back-up well. As a result, two wells are now available under the WPA to meet the water
13 demand of Inscription Canyon Ranch, the Preserve at the Ranch and Whispering Canyon
14 (approximately 800 residential lots at build-out). The WPA provides ICRWUA access to up
15 to 164,518,498 gallons per year at a current cost of \$0.248 per 1,000 gallons. While Aqua
16 Meadows, LLC owns ICR#1 and ICR#2, ICRWUA owns all well-related equipment and is
17 responsible for maintaining and operating both wells to secure water under the WPA. Each
18 well, independently, has sufficient pumping capacity to meet the average demand at build-out
19 for all 800 residential lots. The projected demand of all 800 lots is 77,700,000 gallons per
20 year (or an average pumping demand of about 148 gallons per minute). ICR#1 has an
21 average yield of about 385 gallons per minute, while the backup, ICR#2, has an average yield
22
23

24 ⁵ ICRWUA's initial certificate of convenience and necessity (Decision No. 59263, dated
25 August 30, 1995) was approved recognizing service would be provided by a single well (ICR #1)
withdrawing water under the same Water Purchase Agreement.

1 of about 370 gallons per minute.⁶

2 ICRWUA asks the Commission to reopen this Docket in order to evaluate the current
3 situation and determine whether the public interest is served by amending Decision No.
4 64667 to eliminate the requirement that the developer of Whispering Canyon include in the
5 Developer's advance, a well(s) and associated facilities producing sufficient water to serve
6 the extension area at full build-out (i.e., by deleting Findings of Fact 29 and 30, and
7 references thereto in Conclusion of Law 6 and Ordering Paragraphs 2 and 3).

8 **ALTERNATIVELY, TEMPORARILY SUSPEND SERVICE EXPANSION**

9 If the Commission decides it is not in the public interest to amend Decision No. 64667
10 eliminating the well(s) and associated facilities requirement as discussed above, then a
11 temporary suspension of expansion of water service to the unplatted phases of Whispering
12 Canyon Development is appropriate until the developer satisfies the requirements of Decision
13 No. 64667. It is clear that WC#2 (the well provided by the developer) currently is incapable
14 of providing water to serve the extension area (Whispering Canyon) at full build-out.
15 Temporarily suspending expansion of water service to the unplatted Phases of Whispering
16 Canyon (currently Phases 5-11) is consistent with Decision No. 64667 which conditioned all
17 water service within Whispering Canyon upon the developer advancing a well(s) and
18 associated facilities to meet the demand at full build-out. A temporary suspension of further
19 expansion of water service to unplatted phases of Whispering Canyon will not interrupt water
20 service to any existing developed lots or preclude the developer from continuing to sell its
21 existing inventory of platted lots.

22 The temporary suspension of water service into unplatted areas of Whispering Canyon
23 would be promptly lifted upon the developer demonstrating, to Utility Staff's satisfaction, all
24

25 ⁶ Note: ICR#1 is the primary well and ICR#2 is the backup well to be used only in the event of
an emergency or maintenance associated with ICR#1

1 of the following: a) The developer has conveyed to ICRWUA a well or wells producing
2 sufficient water to serve Whispering Canyon at full build-out; b) The Main Extension
3 Agreement has been amended to expressly require the developer, by a time certain, equip the
4 well or wells, install associated production facilities and interconnect the well(s) and
5 associated facilities to ICRWUA's distribution system to be capable of meeting the water
6 demand of Whispering Canyon at build-out; and c) The developer is otherwise in compliance
7 with the Main Extension Agreement entered into with ICRWUA.

8 NOTICE TO DEVELOPER

9 The developer did not intervene in the proceeding leading to the issuance of Decision
10 No. 64667 and is not a party thereto. However, ICRWUA has advised developer's legal
11 counsel of this Application and has mailed a copy of this Application, via certified mail, to:
12 the developer-Whispering Canyon, LLC, the entity owning or holding options on the land-
13 Old Capitol Investment, LLC and their attorney, Paul Roberts, at the addresses set forth in the
14 Proof of and Certificate of Mailing below.

15 WHEREFORE, ICR Water Users Association respectfully requests the Arizona
16 Corporation Commission:

- 17 1. Re-Open Decision No. 64667 and Docket No. W-02824A-01-0900 for the purpose
18 of taking additional evidence to determine whether Decision No. 64667 should be
19 amended to either:
 - 20 a. Eliminate the requirements set forth in Findings of Fact 29 and 30, and
21 references thereto in Conclusion of Law 6 and Ordering Paragraphs 2 and 3
22 (eliminating the new well requirement), or, alternatively,
 - 23 b. Temporarily suspend expansion of water service to service into unplatted areas
24 of the extension area (Whispering Canyon) until the Utility Staff docket a
25

1 Memorandum indicating it has received documentation evidencing, to Staff's
2 satisfaction, all of the following:

- 3 i. The developer has conveyed to ICRWUA a well or wells producing
4 sufficient water to serve Whispering Canyon at full build-out;
- 5 ii. The Main Extension Agreement has been amended to expressly
6 require the developer, by a time certain, equip the well or wells,
7 install associated production facilities and interconnect the well(s)
8 and associated facilities to ICRWUA's distribution system to be
9 capable of meeting the water demand of Whispering Canyon at build-
10 out; and
- 11 iii. The developer is otherwise in compliance with the Main Extension
12 Agreement entered into with ICRWUA.
- 13 2. Direct the Hearing Division to conduct a procedural conference for establishing a
14 procedure for receiving and evaluating such evidence and making a
15 recommendation to the Commission.
- 16 3. Take such additional steps and provide such further relief as the Commission
17 deems just and appropriate.

18 DATED this 4th day of February, 2015.

19 CURTIS, GOODWIN, SULLIVAN,
20 UDALL & SCHWAB, P.L.C.

21
22 By: 

23 William P. Sullivan
24 501 East Thomas Road
25 Phoenix, Arizona 85012-3205
Attorneys for ICR Water Users
Association, Inc.

PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 4th day of February, 2015, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing mailed
certified, return receipt requested
this 4th day of February, 2015 to:

Whispering Canyon, LLC
c/o Janet Jackin, Statutory Agent
7333 E. Doubletree Ranch Rd. #210
Scottsdale Arizona 85258

Paul E. Johnson, Jr.
P.O. Box 83628
Phoenix, Arizona 85023
Member, Whispering Canyon, LLC

Old Capitol Investments, LLC
c/o Dean Hamilton, Statutory Agent
4620 N. 16th St., Ste. 218
Phoenix, Arizona 85016

PJJR Consulting, LLC
5125 N. 16th St., Ste. 226
Phoenix, Arizona 85016
Manager, Old Capitol Investments, LLC

Paul Roberts, Esq.
Law Offices Roberts & Carver, PLLC
239 South Cortez Street
Prescott, Arizona 86303
Attorney for Whispering Canyon, LLC and
Old Capitol Investments, LLC

